

# **EXHIBIT D**

12/07/2005 13:39 FAX 12122104561

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December 7, 2005

VIA FACSIMILE

Steven A. Maddox, Esq.  
Foley & Lardner LLP  
3000 K Street, N.W.  
Suite 500  
Washington, DC 20007-5143

Re: *Biovail v. Andrx Pharmaceuticals LLC et al.*,  
Civil Action No. 1:05-cv-586 (KAJ)

Dear Mr. Maddox:

This is in response to Andrx's December 6, 2005 letter regarding consolidation, Biovail's initial disclosures under Rule 26(a), and a protective order.

Regarding consolidation, as Andrx knows, the existing schedule in Biovail's view is ambitious. Whether Biovail can agree to consolidate the new lawsuit, directed to five additional tablet strengths, will depend on whether or not Andrx timely produces the documents and things Biovail is entitled to. While Biovail would like to consolidate on the existing schedule, it is not now in a position to make that commitment.

Regarding Biovail's initial disclosures under Rule 26(a), Biovail disagrees that Andrx has met its meet and confer obligations. Biovail's November 29, 2005 letter requested, among other things, that Andrx identify the authority it relies on for the proposition that Biovail should identify persons relevant only to secondary considerations of nonobviousness, when those persons are not relevant to any claim of Biovail, and are not relevant to any articulated defense of Andrx. Please provide a response to this point as well as to the other points raised in Biovail's November 29, 2005 letter.

Regarding the protective order, a draft is attached. Further, if a protective order has not been entered by December 30, 2005, Biovail agrees that its production by that date will be on a outside counsel eyes' only basis, provided that Andrx agrees to do the same with respect to its production by that date.

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Finally, Andrx did not send a copy of its December 6, 2005 letter to Biovail's local counsel, Jack Blumenfeld. As requested in Biovail's November 29, 2005 letter, please copy Mr. Blumenfeld on all correspondence.

Very truly yours,

A handwritten signature in black ink, appearing to read "Preston K. Ratliff II". The signature is stylized with a large, bold "P" and "R", and the "II" is written as a distinct, slightly larger "2" at the end.

Preston K. Ratliff II

cc: Jack B. Blumenfeld, Esq.  
William J. Cattie, III, Esq.  
Martin P. Endres, Esq.  
Herschel Sparks, Esq.